



May 10, 2002

John Morrall
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB, Room 10235
725 17th Street, NW
Washington, DC 20503

Delivered Via Facsimile to: (202) 395-6974

Dear Mr. Morrall:

I am writing to recommend that the Fair Labor Standards Act (FLSA) regulations governing exempt and non-exempt employees be revised. The regulations, 29 C.F.R. Section 541, are completed outdated and very difficult to apply in the modern public workplace. These regulations were developed prior to their application to the public sector, and they are not well designed for use in the public sector.

Because they are so outdated, a good deal of confusion exists about proper application. The biggest problem is due to the duties tests that define certain exempt positions. I believe the General Accounting Office summed it up nicely in a 1999 report to Congress:

“Finally, employers complained that the parts of the regulatory duties tests that call for independent judgment and discretion on the part of those classified as administrators and professionals led to confusing and inconsistent results in classifications of similarly situated employees. Our discussions with DOL investigators and review of compliance cases indicated that this part of the duties test involved difficult and sometimes subjective determinations, and that it was a source of contention in DOL audits. (GAO/HEHS-99-164, “FLSA: White Collar Exemptions in the Modern Work Place,” September 1999)

In order to be classified as exempt, employees must also be paid a certain minimum amount. The highest base amount cited in the current regulations is \$250 per week – about \$13,000 per year. That amount is hopelessly obsolete for a professional or managerial employee in today’s economy.

In short, this entire regulation needs to be carefully reviewed and brought up to date. I recommend that the Secretary of Labor work with both private and public sector representatives to reach solutions for the FLSA regulations that will meet the needs of twenty-first century workplaces.

Sincerely,

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